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April 8, 2014

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Electronically Filed

Re: CC Docket No. 95-116; WC Docket No. 07-149; WC Docket No. 09-109

Dear Ms. Dortch:

I write on behalf of Neustar, Inc., to address the procedures that the Commission should follow in evaluating the recommendation of the North American Numbering Council ("NANC") for selection of the Local Number Portability Administrator ("LNPA") for the contract period scheduled to begin in July 2015. Because the Number Portability Administration Center ("NPAC") plays a foundational role in U.S. telecommunications competition and infrastructure, the selection decision will entail significant consequences for consumers, for the industry, and for future innovation. Furthermore, as our prior filings have demonstrated, the process, as it has unfolded to date, has failed to ensure that these important policy considerations have been taken into account, that all relevant voices have been heard, and that the solution requested in the RFP is robust, highly reliable, and flexible enough to evolve technologically.

The Commission must ensure that the procedure it follows allows it to identify any flaws in the process to date so that the Commission can seek to remedy, or at least to mitigate, those flaws. The selection decision must accordingly be based on a full evidentiary record, supporting a thorough understanding of the role that the NPAC plays in the telecommunications system, the manner in which the next vendor will ensure delivery of all relevant services, the potential effects of the selection on key stakeholders – including law enforcement and public safety interests – and the full direct and indirect costs of any transition. To that end, we respectfully urge the Commission to adopt the following requirements.

First, the Commission should apply a notice-and-comment process that frames the relevant procedural and substantive issues. Notice and comment is required: where the Commission has designated an entity to serve as a neutral numbering administrator pursuant to

Ms. Dortch
April 8, 2014
Page 2

47 U.S.C. § 251(e) based on a NANC recommendation, it has acted after providing notice and seeking public comment.¹ Because the selection process at issue will lead to the designation of a neutral LNP administrator, notice and comment is required here as well.² Furthermore, notice and comment is required here because the selection process has raised novel procedural and substantive issues implicating the Commission's legislative policy-making function. Indeed, the choice of LNPA is among the significant Commission decisions that touch every carrier and much of the American public.

Second, the notice seeking comment on the NANC's proposed recommendation should therefore specifically request comment on the significant issues that have been framed by the many filings in the Commission's docket, not only from Ericsson and Neustar, but also from the hundreds of carriers that have expressed concerns, directly and through their trade associations.

The Commission must specifically rule on whether the extension of the deadline for submission of proposals in April 2013, after the original deadline had already come and gone – presumably to benefit Ericsson – was lawful and appropriate; whether the failure to seek further proposals in January 2014 was in the public interest; and whether the evaluation carried out pursuant to the RFP documents constituted an “apples-to-apples” comparison of competing bids. Substantively, the Commission should seek comment regarding the services that are currently provided by the LNPA today, if any, that will be altered or eliminated under the recommended proposal; whether the evaluation fully and fairly accounts for transition risks and costs for all stakeholders, including those not represented on the North American Portability Management, LLC (“NAPM”)³; and whether the evaluation adequately took into consideration the appropriate role for the NPAC in the PSTN-to-IP transition.⁴ Given the importance of the decision that the

¹ See, e.g., Third Report and Order, *Administration of the North American Numbering Plan*, 12 FCC Rcd 23040, ¶¶ 36-58 (1997); Second Report and Order, *Telephone Number Portability*, 12 FCC Rcd 12281, ¶ 2 (1997); cf. Order, *Toll Free Service Access Codes*, 28 FCC Rcd 15328, ¶¶ 8, 25, 26 (2013) (“Toll Free Service Access Codes Order”) (changing designation of neutral administrator after notice-and-comment procedure).

² Although the selection process may or may not lead to a change in the LNPA, consideration of the possibility of changing the neutral administrator warrants a notice and comment procedure.

³ The NAPM is a private industry consortium that has ten service providers as members.

⁴ Neustar brought many of these issues to the attention of the Commission in a Petition for Declaratory Ruling that it filed in February. See *Petition of Neustar for Declaratory Ruling Concerning the Local Number Portability Administration Selection Process*, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (filed Feb. 12, 2014). Neustar raised the April and October procedural irregularities in a Request for Dispute Resolution submitted to the NANC on March 7, 2014, pursuant to 47 C.F.R. §§ 52.11(c), 52.26(b)(3). See Letter from Aaron M. Panner to the

Ms. Dortch
April 8, 2014
Page 3

Commission has to make, the notice should seek comment on whether the deficiencies in the process to date require that no award be made now and an additional round of bidding be held.

Third, to ensure that the comments filed are meaningful, the Commission should place in the record all documents related to the selection process to date. These documents should be made available to the public, preferably by posting them publicly or, in limited cases involving trade secret information, by making them available to counsel pursuant to protective order. (A similar procedure is typically followed in the case of bid protests in the government procurement context.) Because the Commission is relying on a recommendation that was formulated by a private industry consortium that is closed to the public and other stakeholders, all of the documents related to the NAPM's evaluation of competing proposals must be made available. That would include any votes or other canvassing of members' views on proposals. In addition, all documents related to the communications between and among the Commission (including Commission staff), the NANC, the Selection Working Group, the NAPM, and the Future of NPAC Subcommittee should be made available. By way of example, documents related to the decision to provide an extension of the deadline for submission of proposals and the decision to refuse to seek or to accept further proposals must also be made available. In addition, a transcript of any confidential NANC deliberations should be made available subject to protective order. Because the propriety of decisions that affect evaluation and selection could turn on the procedures that were followed and the rationale supporting them, the parties must be given the opportunity to review those issues completely.

Furthermore, parties and/or their counsel and consultants must be given adequate access and time to review the proposals that were submitted and the evaluation documents. Such a review will provide important technical information that the Commission's technical experts can rely on in forming an independent judgment concerning the adequacy of the evaluation that was performed by the industry and the merits of the competing proposals.

Fourth, the Commission should not delegate the selection of the next LNPA to the Wireline Competition Bureau. The Bureau's authority does not extend to applications or requests that "present novel questions of fact, law or policy."⁵ Because the selection process—and the determination of how to address the NANC's recommendation—present novel questions, the Commission's rules require that the review of NANC's recommendation be addressed by the full Commission. Furthermore, the selection of the next LNPA has important consequences for our nation and many important policy issues at the top of the Commission's agenda, including promotion of intra- and intermodal competition, the PSTN-to-IP transition, reliable emergency communications for consumers, and necessary access for public safety and law enforcement.

Honorable Betty Ann Kane (March 7, 2014). Both the Petition and the Request remain pending at the Commission and the NANC respectively.

⁵ See 47 C.F.R. § 0.291(a), (e).

Ms. Dortch
April 8, 2014
Page 4

These issues include novel questions of first impression raised in this docket and bid review process, touching on major industries and a substantial contract as well as a business in which Neustar has made significant investments for nearly two decades. The Commission is best positioned to evaluate the implications of any reduction in the reliability and functionality and the responsibility of the NPAC. Moreover, at present the Bureau would not have the authority to select any entity other than Neustar to be the LNPA, because the Commission designated Neustar through Commission-level orders and has not delegated to the Bureau the authority to alter that designation.⁶

The Commission has consistently addressed significant issues related to the designation of the LNPA – including the initial designation in 1997, the replacement of Perot Systems by Neustar in 1998, and the 1999 order related to Warburg Pincus's ownership of Neustar – at the Commission level. The Commission should continue to follow that precedent in this matter, given the extraordinary ramifications of the selection decision for telecommunications policy and the operation and functioning of the telecommunications system in this country over the next decade.

⁶ See Second Memorandum Opinion and Order on Reconsideration, *Telephone Number Portability*, 13 FCC Rcd 21204 (1998); Second Report and Order, *Telephone Number Portability*, 12 FCC Rcd 12281 (1997); see also Toll Free Service Access Codes Order, ¶¶ 8, 25, 26; Order, *Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, 14 FCC Rcd 19792, ¶ 17 (1999) (“Congress has vested with the Commission exclusive authority to choose an entity to serve as the NANPA.”).

Ms. Dortch
April 8, 2014
Page 5

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Aaron M. Panner", with a long horizontal flourish extending to the right.

Aaron M. Panner

cc: Julie Veach
Jonathan Sallet
Phillip Verveer
Daniel Alvarez
Rebekah Goodheart
Priscilla Delgado Argeris
Nicholas Degani
Amy Bender